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Yeoh Tseow Suan v Musa bin Haji Hassan

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HIGH COURT (KUALA LUMPUR) — SUIT NO WA-23NCVC-36–05 OF 2021
ARZIAH MOHAMED APANDI JC
23 DECEMBER 2024

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Tort — Defamation — Capacity to sue — Whether plaintiff Cabinet Minister/elected representative could not sue for defamation in official capacity — Derbyshire principle — Whether plaintiff had to tolerate criticism and debate about her public statements and activities — Defendant whilst speaking at public forum made passing remark that plaintiff had written book that sought to turn Malaysia into a Christian nation — Whether remark was nothing new — Whether plaintiff had endured such accusation nonchalantly in the past without taking legal action — Whether plaintiff failed to prove impugned remark had defamed her as plaintiff did admit that her book glorified Christianity and persuaded others to follow that faith — Whether defences of justification and fair comment succeeded — Whether impugned remark was also made on occasion of qualified privilege

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The plaintiff, commonly known as Hannah Yeoh, was Malaysia's incumbent Youth and Sports Minister whilst the defendant was the nation's former Inspector-General of Police. Whilst speaking on national security and harmony at a public forum organised by a local university in early 2020, the defendant had touched on threats posed to the nation and to Islam by various groups, including evangelists. In that context, he remarked that the plaintiff had written a book which could turn Malaysia into a Christian nation ('the impugned remark'). The book, *Becoming Hannah: A Personal Journey* was not something new but was first published in 2014, long before the impugned remark was uttered, and the plaintiff had never taken legal action against anyone for saying that the book glorified Christianity and attempted to persuade its readers to embrace that faith. However, she took umbrage over the impugned remark and sued the defendant for defamation. The defendant relied on the defences of justification, fair comment and qualified privilege. At the outset, the defendant challenged the plaintiff's capacity to sue, arguing that existing law barred a democratically-elected government and its members who held public office from suing for defamation those who criticised their official conduct of public affairs. The plaintiff had admitted at the trial that she was not seeking legal redress in her personal capacity but in her official capacity as an elected representative ('wakil rakyat').

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Held, dismissing the plaintiff's claim:

(1) The plaintiff's explicit admission that she was suing in her official capacity as an elected representative rather than in her personal capacity was fatal to her claim. The case fell squarely within the *Derbyshire* principle adopted and applied by the Court of Appeal in *Syed Nadri Syed Harun & Anor v Lim Guan Eng and other appeals* [2019] 4 MLJ 259. To allow such a claim would create an unacceptable chilling effect on citizens' constitutional right to criticise their elected representatives. On this ground alone, the plaintiff's claim had to be dismissed. This outcome upheld the vital constitutional principle that in a democratic society, elected officials must remain open to robust public criticism and debate about their public statements and activities without being able to wield defamation law as a tool to silence such criticism (see paras 25–27, 36–37 & 84).

(2) The impugned remark related to the plaintiff's book, which expressed her religious views whilst holding public office and allegations about her political motivations. There were no attacks on her private character or conduct that fell within the *Derbyshire* exception. Instead, they were criticisms, however, harsh, of her public role and statements made whilst holding public office (see para 35).

(3) Defamation law clearly forbade focus being put on the impugned remark per se without considering the context and the circumstances in which it was made. Whilst speaking about the ideological and religious challenges the nation faced, the defendant had spoken of unnamed authors who had written books and remarked that the plaintiff had also written a book to turn Malaysia into a Christian nation. He did not go into any specific details about the book or make any further imputations about the plaintiff. Considering the whole speech, the court could not see how the defendant related the plaintiff with such defamatory nature as was pleaded by the plaintiff. A plain reading of the impugned remark simply meant the plaintiff was among others who had written books to turn Malaysia into a Christian nation (see paras 39, 43–46 & 48).

(4) The plaintiff failed to prove that the impugned remark was defamatory of her or that it had lowered her in the estimation of right-thinking members of society. The evidence showed minimal to negligible negative impact to the plaintiff's reputation. The social media reactions and responses to the forum were minimal, with most not reaching even a 1% engagement rate. The plaintiff could not produce evidence of any negative comments directed at her following the forum. Instead, she scored a greater-majority victory in the 15th General Elections in 2022 and her book received a national award in 2023. Whilst she claimed she was distressed and feared for her safety, no evidence was produced to substantiate those claims (see paras 50 & 52).

(5) No defamatory element was established because almost the entire content of the defendant's speech at the forum did not specifically refer to the plaintiff. It was a fact that since 2013, the plaintiff had faced public accusations — vide online news, comments by netizens, flyers and police reports — that she was propagating Christianity and had a religious agenda. However, she had remained steadfast in the face of such accusations and had never taken legal action. This showed that the impugned remark had not tarnished her reputation and supported the finding that the defendant had not defamed her (see paras 56–57).

(6) The defence of justification succeeded as the plaintiff admitted that she had subtly preached Christianity in Malaysia; that she considered herself as 'God's ambassador' to spread the faith and wanted to preach through her political office; that her book was intended for everyone and not just Christians. These admissions undermined her claim that the impugned words were false and malicious. Justification did not require proving that every word was true but that the imputations were substantially true. From a reading of the plaintiff's book, the court was of the view that the plaintiff had adopted the evangelism approach by sharing her personal experiences with Christianity with the clear intention of encouraging readers to follow suit (see paras 58, 74 & 77–78).

(7) Considering all the circumstances, the court found that the defendant's speech at the forum, including the impugned remark, was fair comment and was also protected by qualified privilege. The occasion was privileged as the defendant was speaking as a former IGP about perceived security threats and had a moral and social duty to express his views whilst the audience had a corresponding interest in receiving such information. There was no proven malice towards the plaintiff (see paras 79 & 81–82).

[Bahasa Malaysia summary

Plaintif, yang dikenali sebagai Hannah Yeoh, memegang jawatan Menteri Belia dan Sukan Malaysia manakala defendan adalah bekas Ketua Polis Negara Malaysia. Semasa bercakap mengenai keselamatan dan keharmonian negara di forum awam yang dianjurkan oleh sebuah universiti tempatan pada awal 2020, defendan telah menyentuh ancaman terhadap negara dan agama Islam oleh pelbagai kumpulan, termasuk pendakwah Kristian. Dalam konteks itu, beliau menyatakan bahawa plaintif telah menulis sebuah buku yang boleh menjadikan Malaysia sebagai sebuah negara Kristian ('kenyataan yang dipertikaikan'). Buku tersebut, *Becoming Hannah: A Personal Journey* bukanlah penerbitan baru tetapi telah diterbitkan pada tahun 2014, lama sebelum kenyataan yang dipertikaikan itu diucapkan dan plaintif tidak pernah mengambil tindakan undang-undang terhadap sesiapa yang mengatakan bahawa buku itu memuliakan agama Kristian dan cuba memujuk pembacanya untuk memeluk kepercayaan agama tersebut. Walau bagaimanapun, beliau marah dengan kenyataan yang dipertikaikan itu dan menyaman defendan

kerana memfitnah. Defendan bergantung pada pembelaan justifikasi, komen yang adil dan keistimewaan bersyarat. Pada mulanya, defendan mencabar kapasiti plaintif untuk menuntut atas alasan bahawa undang-undang sedia ada melarang kerajaan yang dipilih secara demokratik dan ahlinya yang memegang jawatan awam daripada menyaman kerana memfitnah mereka yang mengkritik tingkah laku rasmi mereka dalam hal ehwal awam. Plaintif telah mengakui pada hari perbicaraan bahawa beliau tidak menuntut ganti rugi undang-undang atas kapasiti peribadinya tetapi dalam kapasiti rasminya sebagai wakil rakyat.

Diputuskan, menolak tuntutan plaintif:

(1) Plaintif secara terang-terangan mengakui bahawa beliau menyaman atas kapasiti rasminya sebagai wakil rakyat dan bukannya dalam kapasiti peribadinya dan ini menjejaskan tuntutannya. Kes ini dalam lingkungan prinsip *Derbyshire* yang diterima pakai dan digunakan oleh Mahkamah Rayuan dalam kes *Syed Nadri Syed Harun & Anor v Lim Guan Eng and other appeals* [2019] 4 MLJ 259. Untuk membenarkan tuntutan sedemikian akan mewujudkan kesan yang tidak boleh diterima terhadap hak perlembagaan rakyat untuk mengkritik wakil rakyat mereka. Atas alasan ini sahaja, tuntutan plaintif harus ditolak. Keputusan ini menegakkan prinsip perlembagaan yang penting bahawa dalam masyarakat demokratik, pegawai yang dipilih mestilah tetap terbuka kepada kritikan awam dan perbahasan tentang kenyataan dan aktiviti awam mereka tanpa dapat menggunakan undang-undang fitnah sebagai alat untuk mendiamkan kritikan sedemikian (lihat perenggan 25–27, 36–37 & 84).

(2) Kenyataan yang dipertikaikan itu berkaitan dengan buku plaintif yang menyatakan pandangan agamanya semasa memegang jawatan awam dan tuduhan mengenai motivasi politiknya. Tiada serangan terhadap watak peribadinya atau tingkah laku yang termasuk dalam pengecualian kes *Derbyshire*. Sebaliknya, ianya adalah kritikan yang walaupun keras terhadap peranan awamnya, namun kenyataan tersebut dibuat semasa plaintif memegang jawatan awam (lihat perenggan 35).

(3) Undang-undang fitnah jelas melarang tumpuan diberikan kepada kenyataan yang dipertikaikan itu tanpa mempertimbangkan konteks dan keadaan di mana ianya dibuat. Semasa bercakap tentang cabaran ideologi dan agama yang dihadapi negara, defendan telah bercakap tentang pengarang yang tidak dinamakan yang telah menulis buku dan menyatakan bahawa plaintif juga telah menulis sebuah buku untuk menjadikan Malaysia sebagai sebuah negara Kristian. Dia tidak menjelaskan sebarang butiran khusus mengenai buku itu atau membuat sebarang tuduhan lanjut mengenai plaintif. Melihat kepada keseluruhan ucapan, mahkamah tidak dapat melihat bagaimana defendan

mengaitkan plaintif dengan elemen-elemen fitnah seperti yang dikatakan oleh plaintif. Pembacaan ringkas kenyataan yang dipertikaikan itu menunjukkan bahawa plaintif bersama orang lain telah menulis buku untuk menjadikan Malaysia sebuah negara Kristian (lihat perenggan 39, 43–46 & 48).

(4) Plaintif gagal membuktikan bahawa kenyataan yang dipertikaikan tersebut memfitnahnya atau bahawa ianya telah merendahkan reputasinya dalam kalangan ahli masyarakat yang berfikiran betul. Keterangan menunjukkan kesan negatif adalah minimum terhadap reputasi plaintif. Reaksi media sosial dan respons terhadap forum tersebut adalah minimum dengan kebanyakannya tidak mencapai kadar penglibatan 1%. Plaintif tidak dapat mengemukakan keterangan yang menunjukkan sebarang komen negatif ditujukan kepadanya berikutan forum tersebut. Sebaliknya, beliau memperoleh kemenangan majoriti yang lebih besar dalam Pilihan Raya Umum ke-15 pada 2022 dan bukunya menerima anugerah kebangsaan pada 2023. Walaupun beliau mendakwa tertekan dan bimbang akan keselamatannya, tiada keterangan dikemukakan untuk menyokong dakwaan tersebut (lihat perenggan 50 & 52).

(5) Tiada elemen fitnah dibuktikan kerana hampir keseluruhan kandungan ucapan defendan di forum itu tidak merujuk kepada plaintif secara khusus. Adalah menjadi fakta bahawa sejak 2013, plaintif telah menghadapi tuduhan awam — melalui berita dalam talian, komen oleh netizen, risalah dan laporan polis — bahawa beliau telah menyebarkan agama Kristian dan mempunyai agenda agama. Walau bagaimanapun, beliau kekal teguh dalam menghadapi tuduhan sedemikian dan tidak pernah mengambil tindakan undang-undang. Hal ini menunjukkan bahawa kenyataan yang dipertikaikan itu tidak mencemarkan reputasinya dan menyokong penemuan bahawa defendan tidak memfitnahnya (lihat perenggan 56–57).

(6) Pembelaan justifikasi berjaya dibuktikan kerana plaintif mengakui bahawa beliau telah secara halus menyebarkan agama Kristian di Malaysia; bahawa beliau menganggap dirinya sebagai 'duta Tuhan' untuk menyebarkan pegangan agama dan mahu berdakwah melalui pejabat politiknya; bahawa bukunya ditujukan untuk semua orang dan bukan hanya orang Kristian. Pengakuan ini menjejaskan dakwaannya bahawa perkataan yang dipertikaikan itu palsu dan berniat jahat. Justifikasi tidak memerlukan pembuktian bahawa setiap kenyataan tersebut adalah benar tetapi cukup secara umumnya adalah benar. Daripada pembacaan buku plaintif, mahkamah berpandangan bahawa plaintif telah mengamalkan penyebaran agama kristian dengan berkongsi pengalaman peribadinya dengan agama Kristian dengan niat yang jelas untuk menggalakkan pembaca mengikutinya (lihat perenggan 58, 74 & 77–78).

(7) Mengambil kira semua keadaan, mahkamah mendapati bahawa ucapan defendan di forum itu, termasuk kenyataan yang dipertikaikan adalah komen yang adil dan juga dilindungi oleh keistimewaan bersyarat. Forum itu merupakan satu keistimewaan kerana defendan sebagai bekas Ketua Polis Negara bercakap mengenai ancaman keselamatan menurut pandangannya dan mempunyai kewajipan moral dan sosial untuk menyatakan pandangannya kepada orang yang hadir untuk menerima maklumat tersebut. Niat jahat tidak berjaya dibuktikan terhadap plaintif (lihat perenggan 79 & 81–82).]

Cases referred to

Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315, HC (refd)
Chong Chieng Jen v Government of State of Sarawak & Anor [2019] 3 MLJ 300, FC (refd)
Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services [2009] 3 MLJ 665, CA (folld)
Dow Jones & Co Inc v Gutnick (2002) 210 CLR 575, HC (refd)
Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor [2010] 2 MLJ 492, HC (refd)
Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor [2021] 2 MLJ 577, FC (folld)
Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli [2022] 3 MLJ 758, FC (refd)
Derbyshire County Council v Times Newspapers Ltd and others [1993] 1 All ER 1011, HL (refd)
Duke of Brunswick v Harner (1849) 14 QB 185, KBD (refd)
Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd [1993] 1 MLJ 408, HC (refd)
Johara Bi binte Abdul Kadir Marican v Lawrence Lam Kwok Fou & Anor [1981] 1 MLJ 139, FC (refd)
Keluarga Communication v Normala Samsudin [2006] 2 MLJ 700; [2006] 2 CLJ 46, CA (refd)
Knupffer v London Express Newspaper Ltd [1944] AC 116, HL (refd)
Lee Kuan Yew v Derek Gwyn Davies & Ors [1990] 1 MLJ 390, HC (refd)
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520, HC (refd)
Lim Guan Eng v Ruslan bin Kassim and another appeal [2021] 2 MLJ 514, FC (refd)
Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association) [2022] 4 MLJ 454, FC (refd)
Mkini Dotcom Sdn Bhd & Ors v Raub Australian Gold Mining Sdn Bhd [2021] 5 MLJ 79, FC (folld)
Mohamad Ezam bin Mohd Nor & Ors v Tan Sri Norian Mai & Ors [2013] 3 MLJ 110, HC (refd)
Morgan v Odhams Press Ltd and another [1971] 2 All ER 1156, HL (refd)
Nevill v Fine Arts and General Insurance Co [1897] AC 68, HL (refd)

Plato Films Ltd v Speidel [1961] AC 1090, HL (refd)
Ramadhar v Ramadhar and others [2020] UKPC 7, PC (refd)
Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720, FC (refd)
Reynolds v Times Newspapers Ltd and others [2001] 2 AC 127, CA (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173; [1988] 1 CLJ Rep 233, SC (refd)
Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong [2024] 4 MLJ 260, FC (refd)
Sim v Stretch [1936] 2 All ER 1237, HL (refd)
Smith v Walker (1912) SC 224 (refd)
Soh Chun Seng v CTOS-EMR Sdn Bhd [2003] 4 MLJ 180; [2004] 5 CLJ 46, HC (refd)
Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56, HC (refd)
Syed Nadri Syed Harun & Anor v Lim Guan Eng and other appeals [2019] 4 MLJ 259, CA (folld)
Tan Sri Musa bin Dato' Hj Hassan & Ors v Uthayakumar a/l Ponnusamy [2012] 1 MLJ 68, CA (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393, HC (refd)

Legislation referred to

Defamation Act 1957 s 5
Evidence Act 1950 ss 101(1), (2), 102, 103
Federal Constitution arts 3, 10, 159
Government Proceedings Act 1956 s 24(2)(a)
Rules of Court 2012 O 40A

Lim Wei Jiet (Lim Wei Jiet) for the plaintiff.
Nur Jehan bt Abu Bakar (Azam Aziz & Co) for the defendant.

Arziah Mohamed Apandi JC:

INTRODUCTION

[1] Reputation is the central interest protected by the tort of defamation (Rolph D, 2022). For centuries, the common law has valued and protected reputation highly (per Lord Nicholls of Birkenhead in *Reynolds v Times Newspapers Ltd and others* [2001] 2 AC 127 (CA) at p 192). Reputation is essentially what other people think of the plaintiff (per Lord Denning in *Plato Films Ltd v Speidel* [1961] AC 1090 (HL). It is the plaintiff's public self. Yet reputation is not the only interest implicated in the tort of defamation. Defamation seeks to balance the competing interests between the protection of reputation and freedom of speech (*Lange v Australian Broadcasting Corporation*

(1997) 189 CLR 520 at p 569; *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at p 599). Quoting Rolph D, the conventional account of defamation law is the balance between these competing interests inherent in its common law principles.

[2] This case displays the striking balance between the plaintiff, a well-respected Member of Parliament ('MP') for the Segambut constituency since 2018 and currently serving in the Malaysian Cabinet as the Minister of Youth and Sports. The defendant was a retired police officer where he served as Malaysia's eighth Inspector-General of Police ('IGP').

[3] An esteemed university in Malaysia invited the defendant to deliver a speech on his capacity as the country's top brass policeman, the former IGP. In fulfilling the invitation, the defendant made an engaging speech on that fateful day, not realising that his words would, in future times, be the subject of a hot dispute in the court quarters.

[4] The speech held at Universiti Teknologi MARA ('UiTM') on Thursday morning, 30 January 2020, was part of an academic discussion entitled 'Wacana Isu Semasa Perjanjian Damai Hat Yai 1989: PKM Menyerah Diri?' (Current issues discussion on the 1989 Hat Yai Peace agreement: PKM's surrender?) ('forum'). The forum featured the defendant as the main speaker, with Prof Emeritus Datuk Dr Zainal Kling ('Prof') as the Chair of Malay Rulers Institution ('Kursi') giving the opening remarks. The Kursi-UiTM organised the forum.

[5] Formerly a part-time lecturer at UiTM, the defendant kicked start his speech with the historical background of the Malayan Communist Party or Parti Komunis Malaya ('PKM') from the Japanese occupation and the country's post-war activities to the British colonial administration, the Hat Yai peace agreement in its modern context, the current political and social implications and the law enforcement and security measures. In his speech, he recommends continued vigilance in protecting national security, emphasising the importance of educating younger generations about this historical chapter while maintaining vigilance of potential threats to national harmony and security. The key takeaway is the importance of understanding Malaysia's historical struggle with communism, its impact on the current society, the need to maintain accurate historical records and to remain watchful against potential threats to the nation.

[6] In the middle of the speech, the defendant continued about 'Hannah Yeoh' (the plaintiff), where he said she had written a book to transform Malaysia into a Christian nation. The name of the book is 'Becoming Hannah A Personal Journey' ('book') that was first published in 2014. This allegation

was presented within a broader discussion about what he termed 'evangelist groups' and their alleged connections to certain political parties, particularly the Democratic Action Party ('DAP'). He connected this to what he described as his research findings that show links between evangelical groups and political movements. He expressed concern about how some Malays had responded to such developments by asking, 'What's wrong if this country becomes a Christian nation?', a question he viewed as problematic given Malaysia's constitutional position on Islam.

[7] The speech concluded with the Q&A session, during which audience members and online participants engaged with the defendant on various topics relating to the topic. The Prof, presented a token of appreciation to the defendant, marking the end of the academic discussion that lasted approximately two hours. Everyone then returned to continue with their daily lives.

HOW IT ALL BEGAN

[8] It was unknown to me when the plaintiff learned about the speech. She told the court that she knew the date from her friend, which she couldn't remember. It must have been sometime around 3 May 2021 when this action was filed, about 459 days after the forum. The focus on the purported slanderous statements in the impugned speech on the plaintiff was during the one-minute duration as pleaded in para 5 of the statement of claim (SOC). It reads that the defendant delivered the speech at the forum ('impugned speech' or 'IS') containing the defamatory statements of the plaintiff coined the slanderous statements in the impugned speech ('SSIS'):

> Dan mereka ingin juga merosakkan agama Islam dalam negara ini kerana mereka mempunyai kalian dengan Evangelist group. Mereka juga mempunyai kaitan dengan Yahudi untuk merosakkan negara ini. Dan *banyak research yang telah saya buat* di mana saya dapati bahawa ada hubungan antara Evangelist group dengan Parti DAP di sini, ya, kerana mereka telah menulis buku, Hannah Yeoh juga telah menulis buku untuk menjadikan negara ini negara Kristian.
>
> Ada juga orang Melayu mengatakan, 'Apa salah negara ini menjadi negara Kristian?' Astaghfirullahalazim. Sampai ada orang Melayu yang sanggup keluarkan perkataan itu. 'Apa salahnya negara ini menjadi negara Kristian?'
>
> Memang kita dah banyak buat silap terutama politicians. Kita sendiri yang buat silap. Kita bagi muka banyak sangat dekat dia orang. Kemudian kita, sekarang ini UEC pun nak diiktirafkannya. Tetapi politicians ni, dia fikir diri dia sendiri) itu masalah dia. Dia bukan fikir fasal negara, bukan fikir fasal tuan-tuan, tidak. Dia fikir fasal, apa keuntungan dia dapat kepada diri dia. Ini masalah dia.
>
> Tetapi akhirnya, kita yang mendapat kesusahan kerana kita punya anak cucu tak tentu lagi negara ini menjadi negara mereka. Kita akan dijajah semula di mana kita tidak boleh menerima ini. Jadi kita perlu berjaga-jaga dan perlu bersuara.

[9] The plaintiff claims the SSIS in the IS were defamatory, while the defendant raises the defences of justification, fair comment, and qualified privilege.

[10] Embarking on the trial, only the plaintiff testified while the defendant and two other witnesses from the Kursi, and a professor from Universiti Utara Malaysia ('UUM'), Dr Kamarul Zaman bin Yusoff ('Dr KYZ') had their days in court. The trial commenced for five days on 24 January 2024, 24 April 2024, 5 July 2024, 20 August 2024 and 22 August 2024. The issues to be tried are whether the SSIS is defamatory and whether there was the actual publication of these impugned statements.

[11] In fulfilling the two-fold legal test for a defamation claim, the plaintiff must satisfy the three conditions to prove the SSIS is defamatory. Only when this court finds the SSIS is defamatory will the court decide if the SSIS is made within the scope of the defences of justification, fair comment (if so, did the plaintiff prove malice to defeat it) and also qualified privilege, if so, did the plaintiff prove malice to defeat.

[12] When the plaintiff first testified, her counsel objected to the defendant's counsel having the Facebook video of the forum ('disputed FB forum video'), which is the IS containing the SSIS being played in court. The parties could not agree on the disputed FB forum video filed in bundle 'B' Part B of the common bundle of documents (referencing 'B-CBOD-B'). What was in p 3 in B-CBOD-B was a screenshot of the disputed FB forum video stilled at minute 0:00:02. When the question posed to the plaintiff by the defendant's counsel necessitates the viewing and listening to it, I allowed the disputed FB forum video to be played at the minute of the SSIS only, ie minute 57:20 for one minute (see notes of proceedings ('NOP') encl 75 pp 31–32). The disputed FB forum video was not tendered as an exhibit, and I am home and dry with the screenshot. The plaintiff relies on the transcript of the forum that was at pp 149–158 C-CBOD-B) ('transcript').

WHAT THE LAW SAYS

[13] It is trite law that to establish defamation, the plaintiff has to prove the following three elements:

(a) the statement bears defamatory imputations.

(b) the statement refers to the plaintiff; and

(c) the statement was published.

[14] The landmark decision of the Rt Hon CJ Mohamed Dzaiddin in *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315 (HC) bears constant

principle that:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show: (1) thejvords are defamatory; (2) the words refer to the plaintiff; and (3) the words were published.

[15] Section 5 of the Defamation Act 1957 ('the DA 1957') states:

> In an action for slander in respect of words *calculated to disparage the plaintiff in any office, profession, calling*, trade or business held or carried on by him at the time of the publication, *it shall not be necessary to allege or prove special damage* whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business. (Emphasis added.)

[16] To prove the first element, the test is whether the words could reasonably, in the circumstances, lead persons acquainted with the plaintiff to believe he was the person referred to (see *Morgan v Odhams Press Ltd and another* [1971] 2 All ER 1156). This requirement was laid out in one of the plethora of cases, in *Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd* [1993] 1 MLJ 408 (HC) where Lim Beng Choon J held:

> It is an essential element of the cause of action for defamation that the words complained of should be published 'of the plaintiff. *The test* which the plaintiff has to furnish an answer to satisfy the court is *whether the words would reasonably in the circumstances lead persons acquainted with the plaintiff to believe that he was the person referred to*.
>
> [28] In *Knupffer v London Express Newspaper Ltd* [1944] AC 116 is relevant, where it was held as follows:
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> > ... it is an essential element of the cause of action for defamation that the words complained of should be published 'of the plaintiff. Where he is not named the test of this is whether the words would *reasonably lead people acquainted with him to the conclusion that he was the person referred to*. The question whether they did so in fact does not arise if they cannot in law be regarded as capable of referring to him. *If a defamatory statement made by a class or a group can reasonably be understood to refer to every member of it, each one has a cause of action* ...

[17] The test for identification of the plaintiff is also an objective one, as mentioned in *Mohamad Ezam bin Mohd Nor & Ors v Tan Sri Norian Mai & Ors* [2013] 3 MLJ 110 (HC) where Lau Bee Lan J held:

> [86] ... On the question of identity, the *test is an objective one* where the ordinary reader must have rational grounds for his belief that the words refer to the plaintiff and giving no room for undue suspicion or pure speculation (per Lord Guest in *Morgan*'s case at pp 1176j–1177a-b).

[18] In determining whether the plaintiff was identified, one can look at intrinsic facts from the rest of the publication or speech itself. Hence, although a plaintiff may not be named in a particular paragraph of a publication, he can be identified by reference to other paragraphs in the same publication which specifically refer to the plaintiff (see *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390 (HC) and *Institute of Commercial Management United Kingdom*).

[19] The second element on publication requires the plaintiff to prove the publication of the impugned statements was by or authorised by defendant. In *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173; [1988] 1 CLJ Rep 233 (SC), publication means:

> In order to constitute publication, the defamatory matter must be published to a third party, and not simply to the plaintiff. By publication is meant the making known of the defamatory matter, after it has been written, to some person other than the person of whom it is written. The uttering of a libel to the party libelled is no publication for the purposes of a civil action: *Wennhak v Morgan* [1880] 20 QBD at p 637.

[20] The established common law rule for media holds that defamation occurs where the material is 'read, heard or observed' and where the person defamed has a reputation to protect, not where the material originated (see *Duke of Brunswick v Harner* (1849) 14 QB 185).

[21] The third element of whether the impugned statements are defamatory, the law can be garnered from *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720 (FC) where the test is laid out:

> [38] The test involved in determining whether or not the words complained of are defamatory is a two-stage process. *Firstly, it must be considered what meaning the words would convey to an ordinary person*: and *secondly, it must be considered whether under the circumstances in which the words were published, a reasonable man would be likely to understand that in a defamatory way* (see: *Wong Yoke Kong & Ors v Azmi M Anshar & Ors* [2003] 4 MLJ 96; [2003] 6 CLJ 559).

[22] As to what constitutes defamation, the infamous judgment of Lord Atkin in *Sim v Stretch* [1936] 2 All ER 1237 (HL) where he said: 'a defamatory statement is one which injures the reputation of another by exposing him to hatred, contempt, or ridicule, or which tends to lower him in the esteem of right-thinking members of society' (also see *Sim v Stretch* [1936] 2 All ER 1237). *Gatley on Libel and Slander* (12th Ed, 2013) at para 1.7 states as follows:

> Three formulae have been particularly influential:

(1) would the imputation tend to 'lower the plaintiff in the estimation of right-thinking members of society generally'? A

(2) would the imputation tend to cause others to shun or avoid the plaintiff? and

(3) would the words tend to expose the plaintiff to 'hatred, contempt or ridicule'? B

[23] The defamatory nature test is its tendency to *excite against the plaintiff the adverse opinion of others*, although no one believes the statement to be true. Another test is: would the words tend to *lower the plaintiff's estimation of right-thinking members of society generally*? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty (see *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56 (HC); followed by *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* [2024] 4 MLJ 260 (FC)). The test *is* whether the words complained of were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally (see *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393 (HC)). Whether impugned statements are defamatory has to be ascertained by reference to the prevailing moral or standards of society (see *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 2 MLJ 492 (HC)). His Lordship Harmindar Singh JC (as he then was) held: C D E

> [20] *The defamatory nature of an imputation also cannot be judged in isolation. It has to be ascertained by reference to the moral or social standards of society generally*. This is an important part of the consideration of what constitutes defamatory matter. Such societal standards are not amenable to evidentiary proof. It will be up to the judges to consider the requisite standards when determining whether a matter is either capable of being defamatory or is in fact defamatory. F G

[24] Back on the case, the following facts are analysed to answer the issues put forth by parties.

Capacity in suing H

[25] The defendant brought the locus issue at the eleventh hour in their reply submissions. In response, the plaintiff reiterates in their further submissions that the plaintiff sues in her personal capacity, not as an MP or Deputy Minister. On that note, the plaintiff argues that the case cited by the defendant, *Syed Nadri Syed Harun & Anor v Lim Guan Eng and other appeals* [2019] 4 MLJ 259 (CA) ('Syed Nadri') is no longer valid law, as the Federal Court overruled it by holding that public officials have the same rights as other citizens to sue for defamation. I

[26] The threshold and determinative issue is the capacity in which the plaintiff brings this action. During cross-examination, the plaintiff explicitly testified that she was not suing in her personal capacity but rather 'Atas kapasiti saya merupakan seorang wakil rakyat' (in her capacity as an elected representative). In the NOP (encl 75) at p 17, she said:

> Tidak setuju ... Atas kapasiti saya merupakan seorang wakil rakyat dan saya mempunyai tugas-tugas rasmi di mana setiap kali saya menjalankan tugas, saya akan berjumpa dengan orang awam dan dalam menjalankan tugas tersebut saya, I'm exposed to many people yang mungkin telah membaca mengenai laporan ini dan atas kapasiti itu, saya telah mengambil tindakan.

[27] This admission was left unclarified in the re-examination of the plaintiff, resulting in it standing as a fact. Its significance cannot be overstated, as it brings the case squarely within the *Derbyshire* principle. The governing law is found in *Syed Nadri* where the Court of Appeal in adopting the *Derbyshire* principle, held that: (a) a democratically elected government and individual members holding office should be open to uninhibited public criticism relating to public administration and affairs; (b) it would be contrary to public interest to fetter freedom of speech by restraining public critiques of those holding public office; (c) such officials can only sue in their personal capacity regarding their private conduct. The rationale is that democratically elected officials should be open to uninhibited public criticism of public administration and affairs. It would be contrary to the public interest to fetter freedom of speech by restraining public critiques of those holding public office. Following *Syed Nadri*, elected representatives cannot sue for defamation when statements relate to their public duties. The only exception is where they sue in their personal capacity regarding their private conduct.

[28] Returning to the plaintiff's argument that the Federal Court overrules the Court of Appeal decision of *Syed Nadri*, it is apparent the Federal Court did not discuss *Syed Nadri* to overrule it. The Federal Court in *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514 (FC) found the pleadings indicated the action was brought by Lim Guan Eng ('LGE') personally and not in his official capacity as Chief Minister. He sued as a private citizen, not through the office of the Chief Minister or the Government of Penang. The impugned statements had specifically named LGE and referred to his alleged disloyalty as Chief Minister and citizen. The sting of the statements was deemed to be more a criticism of LGE personally rather than of his office or the Penang State Government. It held that the Government Proceedings Act 1956 ('the GPA 1956') did not affect LGE since he did not sue in his official capacity. The Federal Court held that it is fundamentally incompatible with modern constitutional democracy to permit elected government authority to commence defamation actions against citizens since those citizens are the ones who put the government in power. However, in instances where the

defamatory publications specifically identify individuals in government rather than making blanket critiques of government policy, then those individuals have the right to commence actions in their personal capacities if their reputations are affected.

[29] The plaintiff's situation here is like that of LGE. Based on the dissenting judgment of the Right Hon CJ (Sabah and Sarawak) Abdul Rahman Sebli where the Rt Hon found that LGE was officially suing as Chief Minister of Penang, not in his personal capacity. This was evidenced by his SOC, witness statement, statement of agreed facts, notice of appeal and the leave question posed to the Federal Court. The CJSS held that having taken this position, LGE could not later claim he was suing in his personal capacity. He was estopped from 'approbating and reprobating'. In dissenting, the Rt Hon held that since LGE sued in his official capacity, he was required under s 24(2)(a) of the GPA 1956 to be represented by a government legal officer, not a private lawyer.

[30] Significantly, the Rt Hon agreed with the Federal Court's decision in *Chong Chieng Jen v Government of State of Sarawak & Anor* [2019] 3 MLJ 300 (FC) that government officials can sue for defamation in their official capacity. However, this did not help LGE's case because his noncompliance with the GPA 1956 requirements for legal representation was fatal to his claim.

[31] The rationale behind the *Derbyshire* principle, as the Court of Appeal explains, is compelling: democratically elected officials should be open to uninhibited public criticism relating to public administration and affairs. It would be contrary to the public interest to fetter freedom of speech by restraining public critiques of those holding public office. This aligns with the constitutional right to freedom of speech under art 10 of the Federal Constitution ('the FC').

[32] The plaintiff admitted to bringing this action in her political capacity, which is her official capacity. Wearing two hats shows her contradictory stand in bringing this action against the defendant. It is befitting that the SSIS can mean either position because of the word 'mereka' (they). Based on the evidence, my view is that plaintiff brought this claim in her official capacity as she pleaded her losses as an elected member of the people. In para 9 SOC, she pleaded by innuendo and taking a whole contextual meaning of the SSIS in the IS to mean and/or understood to mean she is a trustworthy and deceitful politician who would use her position and influence for unlawful and/or illegal purpose and that she would betray Malaysia, its citizens and its foundational principles for her personal interests.

[33] The settled law shows that the plaintiff cannot make such a claim in her

official capacity but bring her party DAP to sue (see *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514 (FC); *Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454 (FC)).

[34] The claim was brought in her official and political capacity as the elected person from her political party, DAP. To allow defamation claims by elected officials suing in their official capacity would create an unacceptable effect on citizens' constitutional right to criticise their representatives.

[35] Here, the impugned statements relate to the book expressing her religious views while holding public office and allegations about her political motivations. These were no attacks on her private character or conduct that would fall within the *Derbyshire* exception. Instead, they were criticisms, however harsh, of her public role and statements made while holding public office.

[36] The plaintiff's explicit admission that she brings this action in her official capacity as an elected representative rather than her personal capacity is fatal to her claim. To allow such a claim would create an unacceptable chilling effect on citizens' constitutional right to criticise their elected representatives.

[37] Therefore, the claim must be dismissed on this jurisdictional ground alone, without needing to analyse the substantive elements of defamation or any defences raised. This outcome upholds the vital constitutional principle that in a democratic society, elected officials must remain open to robust public criticism and debate about their conduct of public affairs, without being able to wield defamation law as a tool to silence such criticism.

[38] The locus standi issue aside, I now delve into the evidentiary proof of defamation by the plaintiff.

Dissection of the slanderous statements (SSIS)

[39] The plaintiff analyses how and why the SSIS brought about the defamatory imputations by dissecting the SSIS to raise them into defamatory imputations. I find the dissection of the SSIS is not following the trite law that it is the context of the words and the reference to the circumstances the words were made are to be scrutinised and not the word per word itself. The impugned statements cannot be disintegrated to prove defamation. The laws on defamation are clear in that we cannot focus on the impugned statements per se but on the context of the words and the reference to the circumstances they were made (see *Nevill v Fine Arts and General Insurance Co* [1897] AC 68 (HL); *Smith v Walker* (1912) SC 224 (HL); *Soh Chun Seng v CTOS-EMR Sdn*

Bhd [2003] 4 MLJ 180; [2004] 5 CLJ 46 (HC); *Tan Sri Musa bin Dato' Hj Hassan & Ors v Uthayakumar a/l Ponnusamy* [2012] 1 MLJ 68 (CA)), namely the impugned statements, to know the speaker's intentions. I take credence of His Lordship Hishamuddin J's dissenting judgment in *Tan Sri Musa bin Dato' Hj Hassan & Ors v Uthayakumar a/l Ponnusamy* [2012] 1 MLJ 68 (CA) that reads:

> [52] The four newspaper reports which I have referred to in this judgment were tendered as exhibits (exh KMS1, exh KMS2, exh KMS3 and exh KMS4) by senior federal counsel, Dato Kamaludin in his first affidavit affirmed on 10 June 2008. The purpose of tendering the newspaper reports in full is to show to the court that the defendants in their press statements were merely referring to Hindraf, the organisation, and not at all to the plaintiff. In para 7 of his affidavit, Dato' Kamaludin avers:
>
> > Kesemua keratan surat khabar yang disebutkan di atas dengan jelasnya tidak merujuk kepada Plaintif tetapi merujuk kepada HINDRAF.
>
> However, in my judgment, the reports do not appear to support the defendants' contention. On the contrary, the full press reports only go to show that there is substance in the plaintiff's claim that the defendants' press statements, as pleaded to in the statement of claim, not only refer to Hindraf but they also do refer to the plaintiff.
>
> ...
>
> [54] In *Nevill v Fine Arts and General Insurance Co* [1897] AC 68 Lord Halsbury LC said (at p 72):
>
> > It is necessary to take into consideration, not only the actual words used, but the context of the words.
>
> [55] In *Smith v Walker* [1912] SC 224 Lord Kinnear said (at p 228):
>
> > Words in themselves apparently innocent may be shown to have a defamatory meaning when they are read with reference to the circumstances in which they were uttered or written, and with reference to the context in which they appear.

[40] Because the disputed FB forum video becomes inadmissible, I cannot refer to it to analyse the IS and the SSIS from my full sensory receptors. The missing visual media (of the video), which relies on non-visual media (the written transcript), affects my findings of facts about the elements of defamation in this case. By reading the transcript and visualising how the forum went about, I find that the defendant's mention of 'Hannah Yeoh' stood out as different in context. This reference (see D-CBOD-B p 19 line 24–34) was made about an alleged book about making Malaysia a Christian nation. Unlike other references tied to historical events, policy decisions, or specific actions, this mention was made regarding what he perceived as ideological threats to the nation's character. The defendant connected this to what he described as broader concerns about evangelical groups and their alleged connections to certain political parties.

Reference to the book

[41] The defendant began from line 27 (see D-CBOD-B p 19) by referring to his research findings ('research yang telah saya buat'). He claimed he had conducted studies that showed connections between what he termed as 'evangelist group' and certain political parties, particularly DAP. He also mentioned findings allegedly showing connections with Jewish groups that he claimed were aimed at destabilising the country.

[42] Amongst others that he spoke of, he said DAP had written books in an attempt to shift responsibility for the 13 May riots to the Malays. He described how DAP operates within the current political system while allegedly maintaining connections with groups that could potentially threaten national security. In discussing religious-based challenges, he mentioned 'evangelist group' and their alleged connections to DAP. He also discussed Hindu extremist movements, referencing the Hindu Rights Action Force ('Hindraf') and issues regarding temple management.

[43] Before mentioning Hannah Yeoh, he referenced unnamed authors more broadly, stating, 'Kerana mereka telah menulis buku' (because they have written books). This was a general reference to what he claimed were various publications by different authors. The use of 'mereka' (they) suggested multiple authors or groups were involved in writing these books.

[44] Around the minute 57–59 mark, the defendant briefly referenced what he claimed was Hannah Yeoh's book. He stated, 'Hannah Yeoh telah menulis buku untuk menjadikan negara ini negara Kristian' (Hannah Yeoh has written a book to make this country a Christian nation). Notably, this reference was brief and did not include specific details about the book's title, content, or publication details. This mention came during his broader discussion about what he termed as ideological and religious challenges to the nation. In the transcript, he made the specific mention at line 29–30 (see D-CBOD-B p 19):

> Kerana mereka telah menulis buku, Hannah Yeoh juga telah menulis buku untuk menjadikan negara ini negara Kristian.

[45] At line 30–34 (see D-CBOD-B p 19) he said:

> Ada juga orang Melayu mengatakan, 'Apa salahnya negara ini menjadi negara Kristian?' Astaghfirullahhalazim (gelak) Sampai ada orang Melayu yang sanggup keluarkan perkataan itu. 'Apa salahnya negara ini menjadi negara Kristian?'
>
> (There are also Malays who say, 'What's wrong if this country becomes a Christian nation?' Astaghfirullahhalazim (laughs) To the extent that there are Malays willing to say such words. 'What's wrong if this country becomes a Christian nation?')

[46] After that, no other imputation was addressed to the plaintiff until the conclusion of the IS.

On the IS and SSIS being defamatory

[47] The context of the impugned statements was heavily argued when plaintiff said the entire speech in the forum was the impugned statements, but the defendant disputes and said it was only what was pleaded in the SOC. The plaintiff raised this point since the defendant did not plead a bane and antidote situation (where harmful statements in one part of a publication are cured by other statements elsewhere in the same publication), the defendant cannot submit that only the SSIS in the IS are the impugned statements. The plaintiff stressed that the IS must be viewed in its entire context which speech reinforces rather than mitigates the defamatory nature of the statements. The speech focused on national security threats, linking communism and the Christianisation of Muslims as examples, and explicitly connected the plaintiff to these security threats. Therefore, the broader context supports the plaintiff's interpretation of being defamatory.

[48] With much respect, I cannot accept the plaintiff's point. What I observed is that the plaintiff's arguments resemble cherry-picking. The plaintiff dissected the SSIS into arguably defamatory sections, and then the plaintiff wanted this court to consider the entire speech. The basic principles applied where parties are bound by their respective pleadings. The plaintiff pleaded that the defamatory statements are the SSIS in the IS contained in the speech given at the forum by the defendant. The law on defamation is also settled where the whole context of the speech must be considered by this court to determine if there is defamation. The defendant did not plead the bane and antidote situation because it is unnecessary as the law requires a full consideration of the contents of the IS. Considering the whole speech, I don't see how the defendant relates the plaintiff with such defamatory nature as pleaded by the plaintiff. Plain reading (not watching) of the SSIS means others also wrote the book, including the plaintiff, to turn this country into a Christian nation. A broader reading of the whole transcript of the forum would reflect that the defendant made the passing remark of the plaintiff also writing the book to change the nation to a Christian nation.

[49] The bane and antidote situation was discussed in the judgment of His Lordship Harmindar Singh FCJ in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577 (FC) ('Nurul Izzah') where the explanation is purposive:

> [30] In our respectful view, this was not really a bane and antidote situation. It was rather a case of whether upon a consideration of the entire statement, and not just a minor part, there were matters which were defamatory of the appellants. This was

A a question of fact to be determined and assessed by the standard of the ordinary, reasonable and fair-minded reader or viewer. In short, the issue really is: how would such a reader or viewer assess the statement

[31] Now, of course, in the real world, readers may only look at the headlines or speed read such that they are not interested in the whole article or in what is B presented visually. It depends on whether they are in a hurry, as most people are nowadays, or whether they have all the time in the world to read the entire long article. This much was also noted by Lord Nicholls in *Charleston* at p 319:

> Everybody reads selectively, scanning the headlines and turning the pages. One C reader, whose interest has been quickened by an eye-catching headline or picture, will pause and read an article. Another reader, with different interests or less time, will read the headline and pass on, leaving the article unread.

[32] So, it is really a fiction in the law of defamation that in assessing whether the material in question carries a defamatory meaning, the ordinary, reasonable person D is taken to have read, heard or viewed the whole of the material. In other words, although most people may only look at headlines and form their conclusions immediately, the law operates on the basis that the ordinary reasonable person must be taken to have read or viewed the whole material to the bitter end.

E **[50]** While the impugned statements explicitly named her, I find that the plaintiff has failed to establish that the statements were defamatory. The test is whether the statements would lower the plaintiff's estimation of right-thinking members of society. The evidence shows minimal to negligible negative impact on the plaintiff's reputation.

F

[51] I find that the plaintiff could not prove that the IS that included the SSIS referred to her. She admitted that words like 'mereka' (they) did not refer to her and that many parts of the IS and even SSIS statements referred to others. When examining the IS in its full context, most part discussed general G concerns about various groups, and only the specific mention of the 'book' referred to her. The IS, including the SSIS, were part of a broader two-hour discussion about national security issues.

[52] The plaintiff tendered only the transcript of the speech that embodied H the IS and the SSIS without the disputed FB forum video. I find negligible negative impact on the plaintiff's reputation from the transcript evidence. The social media reactions and responses to the forum were minimal, with most not reaching even a 1% engagement rate. The plaintiff could not produce evidence of any negative comments directed at her. In addition, her electoral success I actually increased exponentially in the 14th General Election in 2018 ('GE14') and the 15th in 2022 ('GE15') from 53,124 to 68,438 voters. Also, the book received a national award in 2023. While she claimed distress and fear for safety, no evidence, like police reports, was produced to substantiate these claims. Such evidence affecting the plaintiff's reputation was non-evident since

there was minimal social media engagement with the forum posts, no documented adverse reactions, and the plaintiff's increased electoral success after the statements. While the plaintiff claimed distress and fear for safety, no corroborating evidence like police reports was produced.

[53] The following excerpts of *Nurul Izzah* is explanatory:

> [38] In our view, the real question for determination relates to the impression created in the mind of the ordinary, reasonable viewer after viewing the whole press statement. In our assessment, such person will not pay any attention to the alleged defamatory matter complained of which was in effect one sentence in a very long press statement and instead be focused only on the major part of the press statement concerning the wife of the first plaintiff. That was the main sting which because of its focus ameliorated the effect of the subject matter of complaint which was, in effect, that one sentence.
>
> That one sentence was meant to be only a precursor or introduction to the main sting in that it was the revelation by Rafizi of the misuse of funds that led to the first defendant raising new questions about the conflict of interest of DS Sharizat in the purchase of the condominiums. No action has since been filed by DS Sharizat in respect of these allegations although a suit was filed against Rafizi for the statements which he had made.

[54] Following *Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services* [2009] 3 MLJ 665 (CA), the statements must be examined in their entirety and not cherry-pick portions. In parroting His Lordship Harmindar Singh FCJ in *Mkini Dotcom Sdn Bhd & Ors v Raub Australian Gold Mining Sdn Bhd* [2021] 5 MLJ 79 (FC) ('Mkini Dotcom'):

> It is trite law that allegedly defamatory words are to be objectively assessed and not through the eyes of the complaining plaintiff or the meaning the plaintiff gives to the words (see *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 3 CLJ 729 at para [45]).

[55] Guidance is again resorted to *Nurul Izzah* where the relevant judgment speaks:

> [34] On our part, we would much prefer to accept the view in *Charleston* that the publication must be taken to have been viewed as a whole especially when considering whether any sting contained in the headlines, for example, has been neutralised by the context when viewed as a whole. We are nevertheless prepared to accept that in an exceptional case, where the particular facts and circumstances so warrant, the impugned material may be defamatory when viewed in isolation. A lot, we think, depends on the way new technology is being used to mislead viewers intentionally by some media either for the sake of sensationalism to deepen their pockets or to promote some insidious agenda by their backers. It cannot be right and just that there be no remedy in such a case.

[56] Here, I find the defamatory element not established because almost the

entire contents of the IS including the SSIS, do not specifically refer to the plaintiff. The fact that the plaintiff has faced similar allegations of spreading Christianity ever since 2013 (see J-CBOD-B pp 1–20; K-CBOD-B pp 1–5), accusations of the same sort were typical. The online news, comments by netizens on the social media, flyers and police reports about her religious agendas had long existed (see C-CBOD-B p 98–1041–2; 3–5). The plaintiff nonchalantly did not take any legal action. For this case, the plaintiff took more than two years to take legal redress despite the impugned statements made by the defendant was in early 2020.

[57] I find the plaintiff was steadfast in upholding her Christian faith through the years. She sustained the accusations of having a religious agenda to spread. I don't see her suffering any losses, but she was steadfast in her religious faith. Although the plaintiff bears no burden to prove damages as they are presumed once defamation is established, her steadfastness against the accusations shows that the IS, including the SSIS, did not tarnish her reputation. This finding supports the fact that no defamatory words were made by the defendant.

[58] The admissions by the plaintiff lend some credence to the underlying thrust, if not the specific allegations, of the defendant's statements. These include admissions about preaching Christianity in Malaysia (albeit subtly), returning from abroad as 'God's ambassador' to spread her religion, and wishing to preach through her political office. She also admits that she preaches Christianity in Malaysia, albeit subtly, that this subtle preaching is 'part of who she is', that after studying abroad, she returned as 'God's ambassador' to spread her religion and that she wished to preach through her political office. These admissions undermine her claim that the defendant's statements were false and malicious.

[59] When evaluating whether the disputed words are likely to carry defamatory meaning, this court needs to look at the natural and ordinary meaning of the statement as a whole and in the context and circumstances in which it was used. The Court of Appeal case of *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700; [2006] 2 CLJ 46 (CA) elucidated:

> [16] At the outset we would state that the test to be applied when considering whether a statement is defamatory of a plaintiff is well settled in that it is an objective one in which it must be given a meaning a reasonable man would understand and for that purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article.

[60] How the SSIS in the IS brings negative connotation or defamatory implication against the plaintiff as claimed is unproven. Upon admitting to

never listening to the entire speech save for the two minutes of the SSIS show, she has no inkling of the speech. By not listening and watching the entire speech, she didn't know the whole picture of the speech. When the plaintiff dissected the speech into segregated parts of the IS and SSIS, she was far from knowing if the SSIS was defaming her or not. To bring more doubt, what the plaintiff stated in para 5 SOC shows failure to identify which statements of the SSIS are the 'stings' alleged to be defamatory against her. The plaintiff could not prove that the defamatory statements (SSIS) were referring to her. If she cannot be sure, there is no defamation claim.

On its reference to the plaintiff

[61] It is established law that every defamatory statement must refer to the plaintiff (see *Institute of Commercial Management*). The testimony shows the plaintiff agreeing that 'they' in these sentences may or may not include her and that she has not produced any. She admitted when challenged that the 'they' referred to by the defendant in the first and second sentences do not refer to the plaintiff. Further, the plaintiff agreed she had no documents to support that the SSIS refers to her where she plainly answered 'No documents'.

[62] The burden of proof lies on the party making the claim (refer to s 101(1) and (2) of the Evidence Act 1950 ('the EA 1950'). Section 102 of the EA 1950 further states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence was given. Section 103 of the EA 1950 states the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless any law provides it that the proof of that fact shall lie on any particular person. In *Johara Bi binte Abdul Kadir Marican v Lawrence Lam Kwok Fou & Anor* [1981] 1 MLJ 139 (FC), it was held:

> It was all a matter of proof and that until and unless the plaintiff had discharged the onus on her to prove her case on a balance of probabilities the burden did not shift to the defendant and no matter if the defendant's case was completely unbelievable, the claim against him must in this circumstance be dismissed.
>
> It is always for the plaintiff to prove the defamatory words were published of and concerning him. The onus is firmly upon him, and if he does not discharge it, he has no cause of action (see *Morgan v Odhams Press Ltd and another* [1971] 2 All ER 1156 at p 1179).

[63] The plaintiff failed to prove that the SSIS in the IS refers to or is understood to refer to her. The word 'they' referred to is ambiguous with unspecified identities, where the gap in proving who 'they' remains unproven by the plaintiff, worsened by her consistently concurring that the persona of 'they' does not refer to her. The impugned statements, the SSIS, must be read in their entirety and proper context. My view is they are of a broader

commentary about various perceived threats to national security, with only portions specifically mentioning the plaintiff. No one person can make this country a Christian country, not even the elected member of Parliament. Article 3 of the Federal Constitution ('the FC') enshrined the religion of Islam as Malaysia's religion; but other religions may be practised in peace and harmony in any part of the country. A two-thirds support of the members of Parliament is required to amend under art 159 of the FC.

[64] Suppose the impugned statements (SSIS) are assessed through the audio-visual settings. In that scenario, the SSIS might contain a pause in between, notably a comma, in the transcript that would be written as 'Kerana mereka telah menulis buku, Hannah Yeoh telah menulis buku, untuk menjadikan negara ini negara Kristian'.

[65] Hypothetically, the defendant could also be expressing in a different tone like this 'Kerana, mereka telah menulis buku Hannah Yeoh, telah menulis buku untuk menjadikan negara ini negara Kristian'.

[66] Therefore, I concur with the defendant's arguments that any reasonable person, by reading the transcript, cannot ascertain the meaning of the statement that was transcribed from the video. The writing of the transcript is two-dimensional and lost the visual and hearing senses to fully appreciate what the defendant meant when he uttered the SSIS. There will be more than one interpretation of the IS and SSIS documented in the transcript, which I find cannot be conclusively referring to the plaintiff as the person or the party that aimed to change this country into a Christian nation.

[67] The plaintiff fails to prove defamation, making her claim against the defendant devoid of merit. With the first-stage test to prove defamation completed, the defendant now need not prove his defences since there was no defamation. Nonetheless, it is instructive for me to address his defences to complete the second-stage assessment for the defamation action.

On its publication

[68] The defendant showed that he was merely an invited speaker with no knowledge that the forum would be broadcast and only learned of the Facebook Live streaming towards the end of the forum during the Q&A session. He had no control over publication, as it was done by UITM. The publication statistics reveal less than 1% engagement rates, no negative comments directed at the plaintiff, and no evidence of widespread dissemination.

Justification defence

[69] The defendant must prove the IS and the SSIS are justified. The judgment of Wan Hamzah SCJ in *S Pakianathan v Jenni Ibrahim and another case* at p 177–178 refers:

> The burden lies upon the defendant to establish justification. The burden does not lie on the plaintiff to prove that the defamatory words are false, because the law presumes this in his favour: *Belt v Lawes* (1882) 51 LJQB 359 361. To establish justification, the defendant must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation was true: *Peters v Bradlaugh* (1884) 4 TLR 467.

[70] The Federal Court in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli* [2022] 3 MLJ 758 (FC) ('DS Dr Mohamad Salleh') emphasised that the defence of fair comment exists precisely to allow the expression of views on matters of public interest, which this was. The forum was organised by the Kursi-UITM, which gave it institutional credibility. The defendant, as the former IGP, had a moral and social duty to speak on matters affecting national security, and the audience had a corresponding interest in receiving such information. Significantly, there is no evidence of malice, as the defendant said he based his statements on Dr KYZ's academic analysis, spoke within the context of broader national security concerns, and had no control over the publication of his speech.

[71] Concerning Dr KYZ's testimony, the plaintiff contends that since he was not qualified as an expert witness and did not meet the requirements under O 40A of the Rules of Court 2012 ('the ROC 2012'), his opinions should be given little to no weight. The defendant's counsel clarified during the trial that Dr KYZ did not testify as an expert witness. Accepting the plaintiff's arguments, I did not take Dr KYZ as an expert but as a plain witness. However, the defendant regarded Dr KYZ as an expert when he referred to Dr KYZ's academic writings and analysis when he made the IS and SSIS. Based on the academic background of Dr KYZ, the defendant cannot be faulted in having regard to Dr KYZ as a fellow academician with credentials.

[72] The defendant, amongst others, relied on Dr KYZ's expose in the FB posting about the book, *Becoming Hannah: A Personal Journey*. The defendant pleaded it under his justification defence. The plaintiff argued that the defendant cannot rely on excerpts from the book to establish justification since this was not properly pleaded in the defence. The fact that the book was marked as an exhibit or referenced by witnesses does not override this procedural requirement.

[73] With due respect, I cannot accept such an argument. The book was clearly stated in the defence under justification, whereby the defendant relied on Dr KYZ's expose of the book. The book is tendered in court as Part B

document in B-CBOD-B pp 4–146. The defendant is allowed to rely on the contents of the book, where the plaintiff is the author, was asked about a few particular excerpts of her writings.

[74] The defendant had read the entire book where, by his conclusion, that he found the plaintiff to have used her political activities for her overlapping Christian activities (see NOP encl 78 pp 57–60). I also read the book. A read of the extracted part at p 110 (see K-CBOD-B p 12) where she wrote of (her) the plaintiff's 'second reason in writing this book. To glorify the Lord. May I glorify Him with this testimony and as you read my journey. I pray you see His hand at work. He is waiting to do the same in your life. Only obey. With God, all things are possible' (see B-CBOD-B p 126). From my viewpoint, the plaintiff adopted the evangelism approach through testimony by sharing her personal experience with faith to encourage others to embrace similar beliefs. She uses her life story as a way to demonstrate what she believes is God's influence and power, with the clear intention of encouraging readers to consider or strengthen their own Christian faith. The meaning of 'evangelist' is seen at p 57 F-CBOD-B.

[75] The constitutional right to freedom of expression and the public interest in allowing robust debate about national importance. *DS Dr Mohamad Salleh* consistently emphasises that fair comment and qualified privilege exist to protect such discourse.

[76] In *Ramadhar v Ramadhar and others* [2020] UKPC 7 the Privy Council held that 'The need for politicians to follow high standards in political debate and the expectation that politicians should be open to reasonable criticism are universal features of a democratic society'.

[77] There is truth with the admissions by the plaintiff that she preaches Christianity subtly in Malaysia, that she returned as 'God's ambassador', that she wanted to preach through her political, and that her book was intended for everyone, not just Christians. Justification does not require proving every word true but rather the substantial truth of the imputations. These admissions by the plaintiff provide a significant basis for the defendant's statements.

[78] All in all, the defendant succeeded in its justification defence.

Fair comment defence

[79] The SSIS is a minimal statement made by the defendant based on intelligence information related to national security and academic disclosure made by Dr KYZ only where it is proportionate and not excessive. The IS, including the SSIS, was verified for accuracy with reasonable and rational steps

when it was based on intelligence information related to national security and academic disclosure made by Dr KYZ. In addition, the defendant's position as former IGP placed the defendant in a continuing responsibility to comment and provide views on national issues involving law, security and national wellbeing. I find that the defendant made a fair comment about the IS and the SSIS, considering the forum and his audience at the material time. Moreover, the feedback and response from the public, including the netizens, did not sting the plaintiff. The allegation of any damage suffered by the plaintiff remains without evidential substance.

Qualified privilege defence

[80] The plaintiff submitted that the defendant failed to address the Reynolds ten-point test of responsible journalism in their submissions, which is a crucial element for the defence of qualified privilege. The law is settled that the defendant bears no burden to satisfy the test to prove its defence. Referring to *Mkini Dotcom*, His Lordship Harmindar Singh FCJ made clear:

> The cases are replete with warnings that the ten points should not be treated as compulsory requirements that will have to be met before a successful plea of responsible journalism can be accepted. As mentioned earlier, they are not 'hurdles to be cleared' (per Lord Bingham in *Jameel*) but must be applied in a practical and flexible manner having regard to practical realities (per Lord Nicholls in *Bonnick v Morris*). In *Tony Pua*'s case, in speaking for this court, Azahar Mohamed FCJ (now CJ Malaya) reiterated that the ten points were explanatory only and served as guidelines with the weight to be given varying from case to case.

[81] The forum was organised by Kursi-UiTM, which is mandated to protect the religion of Islam and Malay customs. The defendant, speaking as a former IGP about perceived security threats, had a moral and social duty to express his views while the audience had a corresponding interest in receiving such information. The IS contained the defendant's perceived security threats to an audience with a corresponding interest in receiving such information. There is no proven malice towards the plaintiff. Apart from the plaintiff, the defendant also commented on several individuals in the IS, but none took legal action against him.

[82] The defendant had a moral and social duty to express his views while the audience had a corresponding interest in receiving such information. This creates a privileged occasion.

[83] While open public discourse must be balanced against the protection of reputation, I find that in this case, the plaintiff failed to prove the statements were defamatory and the occasion was privileged. The plaintiff did not prove

malice, which was fortified by the defendant admitting that his statements were based on his knowledge and from the research he had conducted.

[84] The defendant's constitutional right to freedom of speech and expression under art 10 of the FC must be given appropriate weight. The constitutional right to freedom of expression must be robustly protected, particularly regarding matters of public interest and statements made on privileged occasions. While responsible speech is important, public figures must expect and tolerate robust criticism and debate about their public statements and activities.

CONCLUSION

[85] The final limelight is His Lordship Harmindar Singh FCJ's closing judgment in *Mkini Dotcom* where he said:

> Malaysia is also a modem pluralistic democracy with fundamental human rights guaranteed under the Federal Constitution. Freedom of speech is provided under art 10 of the Federal Constitution with restrictions to be provided by laws against matters such as defamation. So, for the same reasons as advanced in the three jurisdictions, and taken together with the constitutional imperative for protection of freedom of expression, matters of public interest are also deserving of protection in Malaysia.

[86] His Lordship stressed that public interest must refer to matters involving public life and the community, including important matters relating to the government and the public administration, as opposed to matters which are purely personal and private (see *Reynolds v Times Newspapers Ltd and others* [2001] 2 AC 127 (CA) at p 176).

[87] While open public discourse must be balanced against the protection of reputation, I find that in this case, the plaintiff failed to prove the statements were defamatory; the occasion was privileged; no malice was proven, and that defendant had reasonable grounds for his statements based on the plaintiff's admissions and writings; the publication was not within defendant's control.

[88] The constitutional right to freedom of expression must be robustly protected, particularly regarding matters of public interest and statements made on privileged occasions. While responsible speech is important, public figures must expect and tolerate robust criticism and debate about their public statements and activities.

[89] In ending, this claim is dismissed with costs.

Plaintiff's claim dismissed with costs.

Reported by Ashok Kumar